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Attorneys for Defendants,
1-800 RADIATOR & A/C, LLC [erroneously sued
and served as 1-800 RADIATOR & A/C INC.];
SPIRE SUPPLY, LLC; DRIVEN BRANDS
HOLDINGS, INC. [former direct subsidiary of
Driven Investor, LLC]; DRIVEN BRANDS
SHARED SERVICES, LLC [erroneously sued and
served as DRIVEN BRANDS SHARED
SERVICES, INC.]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK NASON, an Individual,

Plaintiff,

v.

1-800 RADIATOR & A/C INC.; SPIRE
SUPPLY, LLC; DRIVEN INVESTOR,
LLC; DRIVEN BRANDS HOLDINGS,
INC.; DRIVEN BRANDS SHARED
SERVICES, LLC; DRIVEN BRANDS
SHARED SERVICES, INC.; and DOES
ONE through TWENTY-FIVE, Inclusive,

Defendants.

CASE NO.: 2:22-cv-01989-DAD-JDP
Assigned to Hon. Dale A. Drozd

**STIPULATED PROTECTIVE ORDER
PURSUANT TO E.D. CAL. CIV. L.R. 141.1
AND ~~[PROPOSED]~~ ORDER**

Complaint Filed: July 28, 2022
Date of Removal: November 2, 2022

1. PURPOSES AND LIMITATIONS.

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, including, but not limited to, the following documents and information: records and/or information relating to the financial impact of the COVID-19 pandemic on Defendant DRIVEN BRANDS SHARED

SERVICES, LLC (“DBSS”); records and/or information relating to the furlough and/or layoff of Non-Parties by DBSS; records and/or information relating to the Initial Public Offering (“IPO”) of Defendant DRIVEN BRANDS HOLDINGS, INC. (“DBH”); records and/or information relating to the conversion of Plaintiff MARK NASON’s (“Plaintiff”) profits interests into common stock in relation to the IPO; and any other records and/or information relating to the financial information of Defendants 1-800 RADIATOR & A/C, LLC (“1-800 Radiator”), SPIRE SUPPLY, LLC (“Spire”), DBSS, and DBH (collectively referred to hereinafter as, “Defendants”) and the private information of Non-Parties.

Each of the above-referenced documents require protection from public access and/or disclosure because they either implicate the financial privacy of Defendants, the privacy concerns of Non-Parties, or relate to confidential business and/or proprietary documents and/or information that Defendants do not publicly disseminate, respectively.

Plaintiff and Defendants (collectively referred to hereinafter, as “Parties”) hereby stipulate that a Court Order rather than a private agreement is necessary because the Parties intend to use, disseminate, and/or disclose such documents and/or information in the context of the Parties’ litigation, and request that the Court, subject to its approval, enter the Parties’ Stipulated Protective Order pursuant to E.D. Cal. Civ. L.R. 141.1 and [Proposed] Order (“Stipulated Protective Order”). Accordingly, the parties hereby stipulate and petition the Court to enter the following Stipulated Protective Order.

The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal. Eastern District of California Civil Local Rule 141 (“Local Rule 141”) sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the Court to file material under seal.

2. DEFINITIONS.

1 **2.1 Challenging Party:** a Party or Non-Party that challenges the designation of
2 information or items under this Order.

3 **2.2 “CONFIDENTIAL” Information or Items:** information (regardless of how it is
4 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
5 of Civil Procedure 26(c), and specifically, the following documents and/or information: records
6 relating to the financial impact of the COVID-19 pandemic on DBSS; records relating to the
7 furlough and/or layoff of Non-Parties by DBSS; records relating to the IPO of DBH; records
8 relating to the conversion of profits interests into common stocks in relation to the IPO; and any
9 other records relating to the financial information of Defendants and the private information of
10 Non-Parties.

11 **2.3 Counsel (without qualifier):** Counsel of Record for the Parties (as well as their
12 support staff).

13 **2.4 Designated House Counsel:** House Counsel who seeks access to “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

15 **2.5 Designating Party:** a Party or Non-Party that designates information or items that
16 it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18 **2.6 Disclosure or Discovery Material:** all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among other things,
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 **2.7 Expert:** a person with specialized knowledge or experience in a matter pertinent to
23 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
24 consultant in this action.

25 **2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or**
26 **Items:** extremely sensitive “Confidential Information or Items,” disclosure of which to another
27 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
28 restrictive means.

1 **2.9 Non-Party:** any natural person, partnership, corporation, association, or other legal
2 entity not named as a Party to this action.

3 **2.10 Party:** any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and in-house counsel (and their support staffs).

5 **2.11 Producing Party:** a Party or Non-Party that produces Disclosure or Discovery
6 Material in this action.

7 **2.12 Professional Vendors:** persons or entities that provide litigation support services
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
9 storing, or retrieving data in any form or medium) and their employees and subcontractors.

10 **2.13 Protected Material:** any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 **2.14 Receiving Party:** a Party that receives Disclosure or Discovery Material from a
13 Producing Party.

14 **3. SCOPE.**

15 The protections conferred by this Stipulated Protective Order cover not only Protected
16 Material (as defined above), but also (1) any information copied or extracted from Protected
17 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
18 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected
19 Material. However, the protections conferred by this Stipulation and Order do not cover the
20 following information: (a) any information that is in the public domain at the time of disclosure to
21 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
22 a result of publication not involving a violation of this Order, including becoming part of the public
23 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
24 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
25 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
26 use of Protected Material at trial shall be governed by a separate agreement or order.

27 **4. DURATION.**

28 Even after final disposition of this litigation, the confidentiality obligations imposed by this

Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court Order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL.

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or disrupt the case development process or to impose unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions.

If it comes to a Designating Party’s attention that information or items that it designated for protection do not qualify for protection, then that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each

1 page that contains protected material. If only a portion or portions of the material on a page qualifies
 2 for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by
 3 making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents or materials available for inspection
 5 need not designate them for protection until after the inspecting Party has indicated which material
 6 it would like copied and produced. During the inspection and before the designation, all of the
 7 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
 8 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
 9 copied and produced, the Producing Party must determine which documents, or portions thereof,
 10 qualify for protection under this Order. Then, before producing the specified documents, the
 11 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
 12 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.
 13 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
 14 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 15 margins) and must specify, for each portion, the level of protection being asserted.

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 17 Designating Party identify on the record, before the close of the deposition, hearing, or other
 18 proceeding, all protected testimony, or that the Designating Party identify in writing no more than
 19 30 days after receipt of the deposition transcript, all Protected Material.

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
 21 other proceeding to include Protected Material so that the other parties can ensure that only
 22 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound by
 23 Protective Order” (**Exhibit A**) are present at those proceedings. The use of a document as an exhibit
 24 at a deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
 25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Transcripts containing Protected Material shall have an obvious legend on the title page that
 27 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
 28 (including line numbers as appropriate) that have been designated as Protected Material and the

1 level of protection being asserted by the Designating Party. The Designating Party shall inform the
 2 court reporter of these requirements. Before the expiration of the 30-day period for designation, the
 3 deposition transcript shall be treated during that period as if it had been designated “HIGHLY
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After
 5 the expiration of that period, the transcript shall be treated only as actually designated.

6 (c) for information produced in some form other than documentary and for any other
 7 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
 8 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
 9 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
 10 information or item warrant protection, the Producing Party, to the extent practicable, shall identify
 11 the protected portion(s) and specify the level of protection being asserted.

12 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure to
 13 designate qualified information or items does not, standing alone, waive the Designating Party’s
 14 right to secure protection under this Order for such material. Upon timely correction of a
 15 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 16 in accordance with the provisions of this Order.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

18 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a designation of
 19 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 20 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 21 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 22 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 23 original designation is disclosed.

24 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute resolution
 25 process by providing written notice of each designation it is challenging and describing the basis
 26 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
 27 must recite that the challenge to confidentiality is being made in accordance with this specific
 28 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith

1 and must begin the process by conferring directly (in person or via telephone; other forms of
 2 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the
 3 Challenging Party must explain the basis for its belief that the confidentiality designation was not
 4 proper and must give the Designating Party an opportunity to review the designated material, to
 5 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for
 6 the chosen designation. A Challenging Party may proceed to the next stage of the challenge process
 7 only if it has engaged in this meet and confer process first or establishes that the Designating Party
 8 is unwilling to participate in the meet and confer process in a timely manner.

9 **6.3 Judicial Intervention.** If the Parties cannot resolve a challenge without Court
 10 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
 11 Eastern District of California Civil Local Rule 251 (and in compliance with Local Rule 141, if
 12 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties agreeing
 13 that the meet and confer process will not resolve their dispute, whichever is earlier. Each such
 14 motion must be accompanied by a competent declaration affirming that the movant has complied
 15 with the meet and confer requirements imposed in the preceding paragraph. Failure by the
 16 Designating Party to make such a motion including the required declaration within 21 days (or 14
 17 days, if applicable) shall automatically waive the confidentiality designation for each challenged
 18 designation. In addition, the Challenging Party may file a motion challenging a confidentiality
 19 designation at any time if there is good cause for doing so, including a challenge to the designation
 20 of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision
 21 must be accompanied by a competent declaration affirming that the movant has complied with the
 22 meet and confer requirements imposed by the preceding paragraph.

23 The burden of persuasion in any such challenge proceeding shall be on the Designating
 24 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 25 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 26 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
 27 to retain confidentiality as described above, the Parties shall continue to afford the material in
 28 question the level of protection to which it is entitled under the Producing Party's designation until

1 the Court rules on the challenge.

2 **7. ACCESS TO AND USE OF PROTECTED MATERIAL.**

3 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is disclosed or
4 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
5 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
6 the categories of persons and under the conditions described in this Order. When the litigation has
7 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons authorized under
10 this Order.

11 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise
12 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
13 disclose any information or item designated “CONFIDENTIAL” only to:

14 (a) the Receiving Party’s Counsel of Record in this action, as well as employees of said
15 Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation
16 and who have signed the “Acknowledgment and Agreement to Be Bound by Protective Order” that
17 is attached hereto as **Exhibit A**;

18 (b) the officers, directors, and employees (including any in-house counsel) of the
19 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
20 the “Acknowledgment and Agreement to Be Bound by Protective Order” (**Exhibit A**);

21 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
22 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
23 to Be Bound by Protective Order” (**Exhibit A**);

24 (d) the Court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
26 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
27 signed the “Acknowledgment and Agreement to Be Bound by Protective Order” (**Exhibit A**);

28 (f) during their depositions, witnesses in the action to whom disclosure is reasonably

1 necessary and who have signed the “Acknowledgment and Agreement to Be Bound by Protective
2 Order” (**Exhibit A**), unless otherwise agreed to by the Designating Party or ordered by the Court.
3 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
4 must be separately bound by the court reporter and may not be disclosed to anyone except as
5 permitted under this Stipulated Protective Order; and

6 (g) the author or recipient of a document containing the Protected Material or, a
7 custodian or other person who otherwise possessed or knew the information.

8 **7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**
9 **Information or Items.** Unless otherwise ordered by the Court or permitted in writing by the
10 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

12 (a) the Receiving Party’s Counsel of Record in this action, as well as employees of said
13 Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation
14 and who have signed the “Acknowledgment and Agreement to Be Bound by Protective Order” that
15 is attached hereto as **Exhibit A**;

16 (b) Designated House Counsel of the Receiving Party (1) who has no involvement in
17 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3)
18 who has signed the “Acknowledgment and Agreement to Be Bound by Protective Order” (**Exhibit**
19 **A**), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

20 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for
21 this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound by
22 Protective Order” (**Exhibit A**), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2),
23 below, have been followed;

24 (d) the Court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants, and Professional
26 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
27 “Acknowledgment and Agreement to Be Bound by Protective Order” (**Exhibit A**); and

28 (f) the author or recipient of a document containing the information or a custodian or

1 other person who otherwise possessed or knew the information.

2 **7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY**
 3 **CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated**
 4 **House Counsel or Experts.**

5 (a)(1) Unless otherwise ordered by the Court or agreed to in writing by the Designating
 6 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has
 7 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
 8 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the
 9 full name of the Designated House Counsel and the city and state of his or her residence, and (2)
 10 describes the Designated House Counsel’s current and reasonably foreseeable future primary job
 11 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may
 12 become involved, in any competitive decision-making.

13 (a)(2) Unless otherwise ordered by the Court or agreed to in writing by the Designating
 14 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
 15 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant
 16 to paragraph 7.3(c) first must make a written request to the Designating Party that (1) identifies the
 17 general categories of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information
 18 that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of
 19 the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert’s
 20 current resume, (4) identifies the Expert’s current employer(s), (5) identifies each person or entity
 21 from whom the Expert has received compensation or funding for work in his or her areas of
 22 expertise or to whom the expert has provided professional services, including in connection with a
 23 litigation, at any time during the preceding five years,¹ and (6) identifies (by name and number of
 24 the case, filing date, and location of court) any litigation in connection with which the Expert has
 25 offered expert testimony, including through a declaration, report, or testimony at a deposition or

26
 27 ¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert
 28 should provide whatever information the Expert believes can be disclosed without violating any confidentiality
 agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating
 Party regarding any such engagement.

1 trial, during the preceding five years.

2 (b) A Party that makes a request and provides the information specified in the preceding
3 respective paragraphs may disclose the subject Protected Material to the identified Designated
4 House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a
5 written objection from the Designating Party. Any such objection must set forth in detail the
6 grounds on which it is based.

7 (c) A Party that receives a timely written objection must meet and confer with the
8 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
9 within 14 days of receipt of that objection. If no agreement is reached, the Party seeking to make
10 the disclosure to Designated House Counsel or the Expert may file a motion as provided under
11 Eastern District of California Civil Local Rule 251 (and in compliance with Local Rule 141, if
12 applicable) seeking permission from the Court to do so. Any such motion must describe the
13 circumstances with specificity, set forth in detail the reasons why the disclosure to Designated
14 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure
15 would entail, and suggest any additional means that could be used to reduce that risk. In addition,
16 any such motion must be accompanied by a competent declaration describing the parties' efforts to
17 resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions)
18 and setting forth the reasons advanced by the Designating Party for its refusal to approve the
19 disclosure.

20 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the
21 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
22 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material
23 to its Designated House Counsel or Expert.

24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
25 **OTHER LITIGATION.**

26 If a Party is served with a subpoena or a Court Order issued in another litigation that compels
27 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

1 (a) promptly notify in writing the Designating Party. Such notification shall include a
2 copy of the subpoena or Court Order;

3 (b) promptly notify in writing the Party who caused the subpoena or order to issue in
4 the other litigation that some or all of the material covered by the subpoena or order is subject to
5 this Stipulated Protective Order. Such notification shall include a copy of this Stipulated Protective
6 Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
8 Designating Party whose Protected Material may be affected.

9 If the Designating Party timely seeks a protective order, the Party served with the subpoena
10 or Court Order shall not produce any information designated in this action as “CONFIDENTIAL”
11 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the
12 Court from which the subpoena or order issued, unless the Party has obtained the Designating
13 Party’s permission. The Designating Party shall bear the burden and expense of seeking protection
14 in that Court of its confidential material – and nothing in these provisions should be construed as
15 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
16 another Court.

17 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
18 **THIS LITIGATION.**

19 (a) The terms of this Order are applicable to information produced by a Non-Party in
20 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this
22 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions
23 should be construed as prohibiting a Non-Party from seeking additional protections.

24 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
25 Party’s confidential information in its possession, and the Party is subject to an agreement with the
26 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party that some
28 or all of the information requested is subject to a confidentiality agreement with a Non-

1 Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
3 Order in this litigation, the relevant discovery request(s), and a reasonably specific
4 description of the information requested; and

5 (3) make the information requested available for inspection by the Non-Party.

6 (c) If the Non-Party fails to object or seek a protective order from this Court within 14
7 days of receiving the notice and accompanying information, the Receiving Party may produce the
8 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
9 seeks a protective order, the Receiving Party shall not produce any information in its possession or
10 control that is subject to the confidentiality agreement with the Non-Party before a determination
11 by the Court. Absent a Court Order to the contrary, the Non-Party shall bear the burden and expense
12 of seeking protection in this Court of its Protected Material.

13 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
15 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
16 the Receiving Party must immediately (a) notify in writing the Designating Party of the
17 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
18 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
19 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
20 Agreement to Be Bound by Protective Order" that is attached hereto as **Exhibit A**.

21 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE** 22 **PROTECTED MATERIAL.**

23 When a Producing Party gives notice to Receiving Parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
26 is not intended to modify whatever procedure may be established in an e-discovery order that
27 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
28 and (e), insofar as the Parties reach an agreement on the effect of disclosure of a communication or

1 information covered by the attorney-client privilege or work product protection, the Parties may
2 incorporate their agreement in the stipulated protective order submitted to the Court.

3 **12. MISCELLANEOUS.**

4 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to
5 seek its modification by the Court in the future.

6 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective
7 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
9 Party waives any right to object on any ground to use in evidence of any of the material covered by
10 this Protective Order.

11 **12.3 Filing Protected Material.** Without written permission from the Designating Party
12 or a Court Order secured after appropriate notice to all interested persons, a Party may not file in
13 the public record in this action any Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
15 seal pursuant to a Court Order authorizing the sealing of the specific Protected Material at issue.
16 Pursuant to Local Rule 141, a sealing order will issue only upon a request establishing that the
17 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
18 protection under the law. If a Receiving Party's request to file Protected Material under seal
19 pursuant to Local Rule 141 is denied by the Court, then the Receiving Party may file the information
20 in the public record pursuant to Local Rule 141 unless otherwise instructed by the Court.

21 **13. FINAL DISPOSITION.**

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
23 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
24 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
25 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
26 the Protected Material is returned or destroyed, the Receiving Party must submit a written
27 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
28 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material

1 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
2 abstracts, compilations, summaries or any other format reproducing or capturing any of the
3 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
4 of all pleadings; motion papers; trial, deposition, and hearing transcripts; legal memoranda;
5 correspondence; deposition and trial exhibits; expert reports; attorney work product; and consultant
6 and expert work product, even if such materials contain Protected Material. Any such archival
7 copies that contain or constitute Protected Material remain subject to this Protective Order as set
8 forth in Section 4 (DURATION).

9
10 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

11
12
13 FORD & HARRISON LLP

14 Dated:

15 By: _____

16 David L. Cheng
17 Julie A. Bachert
18 Attorneys for Defendants

19 LAW OFFICES OF CODY JAFFE

20 Dated:

21 By: _____

22 Cody Jaffe
23 Attorneys for Plaintiff
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____[NAME], _____[POSITION AND EMPLOYER], declare under penalty of perjury that I have read in its entirety the Stipulated Protective Order issued by the United States District Court for the Eastern District of California, in the case of Mark Nason v. 1-800 RADIATOR & A/C INC., et al., Case No. 2:22-cv-01989-DAD-JDP (“this Action”). I certify that I understand that Protected Material will be provided to me subject to the terms and restrictions of the Stipulated Protective Order. I have been given a copy of the Stipulated Protective Order, and I agree to be bound by its terms and restrictions. I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I understand that the Protected Material shall not be disclosed to anyone, except as expressly permitted by the Stipulated Protective Order. I will not copy or use, except solely for the purposes of this Action, any Protected Material obtained pursuant to this Stipulated Protective Order, except as provided therein or otherwise ordered by the Court in this Action.

I further understand that I am to store and maintain all Protected Material provided to me in this Action in a secure manner that ensures that access is limited to only those persons authorized under the Stipulated Protective Order, until final disposition of this Action. Upon final disposition, all Protected Material in my possession, custody, or control will be returned to Counsel who provided me with such Material or otherwise handled in compliance with the provisions of section 13 (FINAL DISPOSITION) of the Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of the Stipulated Protective Order, even if such enforcement proceedings occur after final disposition of this Action.

I hereby appoint _____

(NAME AND ADDRESS) as my California agent for service of process in connection with this
Action or any other proceedings related to the enforcement of the Stipulated Protective Order.

Executed this ____ day of ____, 20____, at _____.

BY: _____

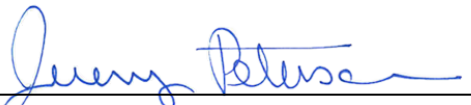
Signature

~~PROPOSED~~ ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Joint Stipulation and Protective Order. The Parties' Stipulation for a Protective Order shall govern all documents and information produced by the Parties in Mark Nason v. 1-800 RADIATOR & A/C INC., et al., Case No. 2:22-cv-01989-DAD-JDP.

IT IS SO ORDERED.

Dated: May 21, 2024


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE